# Evaluating Juncker's Political Commission: The Right Idea in the Wrong Hands?

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The idea of a political European Commission may be the defining idea of the Juncker Presidency. It was the idea that gave Mr. Juncker the Presidency in the first place. His candidacy followed several months of campaigning as the *Spitzenkandidat* of the European People's Party. Upon assuming office, Mr. Juncker justified and promoted his term as Commission President in political terms. He wanted, as he stated in his 2015 'State of the Union', to 'lead a political Commission. A *very* political Commission.'

## Challenges and Opportunities

The political Commission involved a series of trade-offs (some of which were discussed at the time on the pages of *Verfassungsblog*, see here and here). A political Commission could compromise, for example, the Commission's independent regulatory role in enforcing EU law or mediating between the interests of Member States. A Commission with a clearer ideological slant could become the victim of the forces of ordinary politics, alienating those opposed to its priorities.

There is plenty of evidence of this risk coming to pass. The politicization of the Commission's role has made it much easier for opponents of EU policies to cast the Commission as a partisan actor. When investigating violations of the rule of law in Poland, the Commission was therefore portrayed as conducting a 'biased' and 'politically motivated' investigation. By choosing to be 'political', the Commission has associated itself with politics at a time when that profession has its lowest ever level of public esteem.

There has always, however, been a more compelling case for the political Commission too. This is not of course the first political European Commission but simply the first one to be *open about*, or even embrace, its political role. If the Commission is more of an 'ordinary' political actor, it can also be evaluated like one. One of the core features of a democracy is its ability to allow voters to 'throw the rascals out' i.e. to hold decision-makers accountable for their decisions, and if so desired, remove them. As Joseph Weiler has remarked, this is the key test that Europe has failed. The political Commission re-opened this possibility. It provided

one step by which the EU could transition from a technocratic to a democratic project.

This transition depends on one crucial ingredient. Political accountability rests on the ability of voters to render judgment on the policies their leaders have pursued. This requires a level of information, scrutiny and debate that is plentiful at the national level but often scarce at the EU one. It requires going back to the promises the Juncker Commission made at the beginning of its term and investigating whether they have been delivered (and if not, why not). It requires considering whether the Commission has responded well to new policy developments, whether it has shown political leadership and whether it got the most important legal and political calls right or wrong. It finally requires examining the mechanisms by which policy was delivered, such as the renewed political structure of the Commission (e.g. its establishment of a 'First' Vice President, and the role of its Secretariat General). The purpose of this symposium is to ask and answer these questions – did the political Commission work?

# Measuring Success

What are the standards that we should apply when answering that question? Inevitably, evaluating the Commission often leads to personal comparisons to great Commissions of the past. In this game, the Delors era weighs heavily. That was a landmark era, so the folklore goes, because of the leadership role the Commission played in this period.

Today's Commission has some advantages over Mnsr. Delors. It carries an impressive army of officials and agencies, and a range of horizontal competences, that would be the envy of the Commission of that era. With those great powers, however, has come constraint. Today's Commission faces endless negotiation and scrutiny in advancing its policy agenda. The era where the Commission could engage in elaborate experiments, confident that national publics would mostly ignore the catastrophes and be thankful for the successes is long gone. It has made way for an age where all of the EU's activities take place in the public glare. National politics has entered EU politics, and with it, national-led institutions (in particular the European Council) have increasingly sought to constrain the Commission's action, placing themselves as agenda setters. This is the great irony of the political Commission – it has taken on the freedom to select, prioritise and steer its agenda at precisely the moment where the Member States must limit its ability to do so.

When highly salient political questions are at play, a Commission that leads from the front – or that over-reaches its Member States – is thus liable to be humiliated. The Juncker Commission in this sense seemed to learn the lesson of first year EU policy process courses: the Commission should aim its proposals at the state on the edge of a qualified majority vote (no more and no less). Over-reach (as in ambitious early

efforts in areas like refugee re-settlement and social policy) has often been replaced by what Germans have coined *to merkeln* (to wait and see and, if in doubt, to go with the majority view). When evaluating the political Commission we therefore need to keep the political landscape in mind. It is simply less friendly to free and decisive institutional leadership than in the past.

The second important point here concerns not the level but the *type* of standard to be applied. Understandably, a political Commission is likely to be evaluated using political lenses. Those academics and policy-makers of a more social-democratic bent have frequently therefore bemoaned the lack of progress on 'Social Europe' during the Juncker Presidency. At the same time, human rights groups have expressed their concerns at the creeping progress of a security and border control agenda that could restrict the use of European law to embed European states in an international legal (and rights based) order. These are all of course legitimate complaints.

Evaluating a political Commission also, however, implies accepting that such a Commission can no longer be all things to all men. It can no longer engage in the traditional exercise of pretending that all of the EU's policy goals are reconcilable and mutually supportive (with each policy choice necessarily promoting competitiveness *and* equality *and* social cohesion *and* human rights *and* innovation and so on). The political Commission is precisely about breaking this loop: about recognising that governing contested areas of policy requires making choices, and elevating certain goals over others. If we are to hold the political Commission accountable, we also have to hold that Commission accountable to *its own* standards. We have to measure it by the priorities and agenda that it has set for itself, not just the ones that we (from whatever viewpoint) would desire of the EU as an organization 'acting in the European interest' (as if that carried one neutral definition). Evaluating the political Commission in this sense requires new criteria.

# Measuring Juncker's Success

How should these criteria be applied to the Commission and to the Juncker Presidency in particular? Again, it is worth distinguishing here between the two aspects above: the first focusing on leadership, and the extent to which the Commission could build an independent 'European' agenda, distinct from that of the most powerful states; the second focusing on policy, and whether this Commission delivered on its promises.

*Handling the big things*

The first, leadership set of criteria inevitably engages with the style and personality of the President himself. Few would depict this as a high-profile Presidency. Many of the moments where the EU has reached the public eye, such as confrontation with the US administration, machinations over Brexit or spats with individual Member

States, have concerned other individuals, such as the European Council President or Mr. Juncker's chief advisor (and now Secretary General) Martyn Selmayr. Mr. Juncker has chosen (and in respect of failing health, sometimes been forced) to adopt a more hands-off and relaxed style than some of his predecessors, playing down political conflict. This included far higher levels of delegation, with the establishment both of a 'First' Vice President and a list of other VPs, responsible for groupings of policy portfolios (and often associated with those policies in the media eye).

The pace of political life has thus altered. A good example is the volume of legislative proposals. While the second Barroso Commission (according to Eur-Lex) averaged just over 100 legislative proposals adopted per year, the period from 2015-2018 carries so far an average of just over 60 adopted acts per year. To this extent, the Juncker Commission has done what it promised. This was to be a Commission 'doing more on the big things and less on the small things'. It pledged, through its 'Better Regulation' agenda, to focus as much on the removal and consolidation of existing proposals, as on the establishment of new ones.

The question may be less whether the 'small things' were avoided than whether the 'big things' were really implemented. On this front, the Juncker Commission was not short of ideas. To take the example of the 'completion' of the Economic and Monetary Union (EMU), in its 'December package' of last year, the Commission advanced a number of proposals, from the establishment of a European Monetary Fund, to a banking backstop, a Eurozone finance ministry and a stabilization fund for the currency area. In refugee policy, a central goal was the plan, announced in 2015, to relocate Italian and Greek based refugees across the territory of the Union. Both were, in theory, solidarity enhancing projects; designed to allow the greater sharing of risk and common burdens across the European area.

In truth, both the intellectual impetus for these measures, and the means to implement them, rested elsewhere. The relocation and EMU plans took their lead from ideas developed in Berlin and Paris respectively, as well as a number of academic proposals. The lack of progress on both sets of initiatives illustrates well the inability of the Commission to move forward in sensitive policy areas without the support of the Member States (in the EMU case because of German reluctance; in the refugee example because of the simple refusal of Central and Eastern European states to implement an agreement on which they had been outvoted in the Council)

Where results have been found, they have therefore often been cast outside the institutions and framework of the Union. The infamous 'Turkey deal' on asylum flows thus took the form of an inter-governmental agreement. Similarly the Commission's efforts to integrate the fiscal compact within the legal structure of the EU, or institutionalise the ESM through an EU IMF, have floundered following national skepticism. As a result, this Commission has been less than successful in defending the core of Delors' legacy – the 'Community method'. By embracing new modes of

‘Better Regulation’ and soft law processes such as the European Semester, it may even have significantly eroded the anchoring of the EU project in ‘normal’ EU law.

*Beaten Paths and New Adventures*

What about the second, policy-related set of criteria? This requires going back to 2014 and the ‘political guidelines’ set-out by Juncker in the summer of that year. Looking back, this is a rather ambitious (if not very detailed) document. At its heart were ten flagship projects: around half of which concerned ‘deepening’ or altering existing projects (in EMU, the internal market, the Energy Union, Justice and Home Affairs (JHA) and international development); and half of which concerned newer policy challenges (e.g. the ‘digital’ single market, establishing joint asylum and border policies, and establishing a free trade agreement with the US).

It is perhaps unsurprising that the projects involving ‘deepening’ or re-balancing existing EU policies seemed to fare much better than newer adventures. An obvious obstacle is the tendency for well-laid plans to be side-lined by ongoing events. To take the example of the US trade agreement, a plan that had already been severely weakened after extensive resistance and protest in several Member States in 2015 was seemingly killed-off for good by the election of a US President openly sceptical of trade agreements in general and the EU-US agreement in particular.

A further, and more concerning, danger, is that ‘new’ projects require capacities that far outstrip the EU’s existing institutional structure. First among these is the issue of migration and asylum. While the 2014 guidelines included language on border security, its main focus was on harmonising asylum procedures and establishing new policies on legal migration. This approach – essentially tinkering with national rules – was well within the EU’s traditional toolkit. This has to be contrasted with the scale of policy challenges in this field faced almost continuously since 2014. Facing such a challenge – the entry of millions of individuals into the Union and the diverse needs they bring – requires more than the EU’s regular recipe of creating common standards. Such a task requires extensive state capacity in fields like integration and border control that quickly overwhelmed the EU’s administration and agencies.

By contrast, in areas discussed in the 2014 guidelines where the EU’s existing competences are clearer, e.g. digitalization, energy or the JHA, progress in adopting significant legislation (such as the enormous General Data Protection Regulation, GDPR) has been far more rapid. In this sense, we have a Commission whose ability to adapt to new challenges varies enormously across policy fields.

Many of the changes instituted by the Juncker Presidency in more contested areas of policy have thus been changes to tone and institutional direction rather than grand legislative plans.

A case in point is one of the ‘flagship’ projects of a vaguer and more cross-cutting character – the attempt to establish a ‘fairer’ EMU. As part of this, the Commission

promised to conduct social impact assessment on conditionality plans for bail-out states, and to change the direction of the European Semester, allowing for more fiscally and socially balanced recommendations. In the former case, the main result was an IA on the third Greek bail-out, where the Commission argued (with a straight face) that extensive cuts in social provision would provide stable fiscal conditions in the long-term and therefore would have socially *beneficial* effects. In the latter case, there is some evidence that the Juncker Presidency has modestly altered the direction of EU fiscal policy, both providing more flexibility to the Member States and improving the scope and number of 'socially oriented' country-specific recommendations. If the Juncker Presidency has wielded power, it has thus often wielded it in different ways: less focus on innovative big-ticket items and more on everyday interaction and negotiation with national governments.

In this sense, the Juncker Presidency did not turn out so differently from what we expected. We expected a President attune to the weapons of soft power, competent in negotiating, and favouring the slow build-up of national consensus over free-wheeling or impulsive leadership. That is exactly what we got. What we did not get was the more optimistic rendering of the political Commission – a policy innovator, re-defining the Commission's role and wresting control of integration from the Member States. Such a Commission may be near impossible in the early 21st Century: it certainly was ill-suited to the talents of this particular Presidency.

# Calling a Spade a Spade

What then is the future of the political Commission? It would be tempting, given the above, to give up on the idea. If the political Commission yielded a Commission more adept at day to day management than big ideas, and often driven by the agendas of the largest Member States, what was the point in the exercise at all? This may be part of the explanation for the luke-warm reception among national leaders, of continuing the *Spitzenkandidaten* experiment next year. This is epitomized by the attitude of Emmanuel Macron – if such a Europhile leader cannot be drawn to the idea, who can?

It may be too early, however, to abandon the political Commission. The truth, to use another German term coined in EU politics, is that the political Commission is *alternativlos*. Those opposed to the idea must answer a simple question: what is the objective, regulatory, de-politicised set of policies the EU must advance for which the Commission can be a neutral arbiter? The irony of the last decade, and the Juncker Presidency, is that it is the era where previously consensus-based areas of policy, with near unanimous national support (free movement, the need for a common currency, 'basic' rule of law standards, free trade, 'undistorted' competition), have become the most contested set of questions of all. We live in an age (one we might well mourn) where things thought to be un-political, or part of a base-line societal

consensus, are no longer so. This extends to the EU Treaties themselves, and the very idea of free trans-national movement and cooperation.

Integration involves choice; it involves defending a distinct policy agenda in the face of ‘legitimate opposition’ in a far greater sense than ever before. Mr. Juncker may not have been the best of all defenders of a political Commission, but the need for such a Commission is likely to outlive his Presidency.

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